

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

SEP 04 2014

JAMES W. McCORMACK, CLERK
By: spud
DEP CLERK

REGINALD ROBINSON

PLAINTIFF

vs.

CASE NO. 4:14-cv-527-SWW

MIDLAND FUNDING, LLC

DEFENDANT

COMPLAINT

COMES NOW, Plaintiff, Reginald Robinson (Robinson), by and through his attorneys and for his Complaint against Midland Funding, LLC (Midland) states:

This case assigned to District Judge Wright
I. and to Magistrate Judge Reeves

STATEMENT OF JURISDICTION

1. Jurisdiction of this Court arises pursuant to 28 U.S.C. §1331 and 15 U.S.C. §1692k(d).
2. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq.
3. The actions alleged in this Complaint occurred within the State of Arkansas.
4. Venue is proper pursuant to 28 U.S.C. §1391.

II.
PARTIES TO THE CLAIM

5. Robinson is a resident of Little Rock, Pulaski County, Arkansas, and is a "consumer" as defined by 15 U.S.C. §1692a(3), and/or "any person" as defined by 15 U.S.C. §1692d;

6. At the time of the incident described further herein, Midland Funding, LLC (hereinafter "Midland") was a corporation duly authorized to conduct business in the State of Arkansas as a "debt collector /debt buyer," as that term is defined by 15 U.S.C. §1692a(6) and is registered and licensed with the Arkansas State Board of Collection Agencies, and attempting to collect a "debt," as defined in 15 U.S.C. §1692a(5).

7. Midland is being served via its registered agent:

Corporation Service Company
300 Spring Building, Suite 900
300 S. Spring Street
Little Rock, AR 72201

III.
FACTUAL BACKGROUND

8. Midland filed a lawsuit against Robinson in the District Court of Pulaski County, Arkansas on July 22, 2014 alleging a consumer debt. A copy of that Complaint is attached hereto as Exhibit "A" and incorporated herein as if set forth word for word.

9. The lawsuit alleges Robinson defaulted on a credit card account obligation with the original creditor, GE Money Bank.

10. Midland asserted it purchased and was assigned the account.

11. Attached to the Complaint was an Affidavit from Molly Kampa, an employee of Midland Credit Management, Inc., stating the original creditor as GE Money Bank. The Affidavit states that interest is due and accruing at a rate of 5.5% for a total amount due and owing of \$1,209.22

12. The Complaint requests \$1,072.88, all court costs incurred, an attorney's fee, pre-judgment interest as stated in the Affidavit and post-judgment interest of 10%.

13. The Complaint filed by Midland does not contain the contract between GE Money

Bank and Robinson which forms the basis of its claim in violation of Rule 10(d) of the Arkansas Rules of Civil Procedure. Ark. R. Civ. Pro. 10(d) states:

“Required Exhibits. A copy of any written instrument or document upon which a claim or defense is based shall be attached as an exhibit to the pleading in which such claim or defense is based shall be attached as an exhibit to the pleading in which such claim or defense is averred unless good cause is shown for its absence in such pleading.”

The Supreme Court of Arkansas has held that Ark. R. Civ. Pro. 10(d)’s requirement that a copy of the “instrument or document” on which the claim is based be attached is mandatory. See LVNV Funding, Llc v. Rae Nardi, 2012 Ark. 460. Because no contract with GE Money Bank and Robinson is attached, the relief requested contains amounts not authorized by contract in violation of 15 U.S.C. §1692f(1).

14. By not attaching the contract upon which it is suing, Midland is making a false representation of the character, amount, or legal status of the debt in violation of 15 U.S.C. §1692e(2)(A).

15. Midland has attached no evidence that it purchased the debt from GE Money Bank and; thus, is taking action which cannot legally be taken in violation of 15 U.S.C. §1692e(5).

16. Midland is in violation of 15 U.S.C. §1692e(10) by making false representations and engaging in deceptive means in attempting to collect the debt by its inability to document any agreement between Robinson and any creditor in violation of Rule 10(d) of the Arkansas Rules of Civil Procedure.

17. At the time it commenced the action against Robinson, Midland possessed insufficient evidence to pursue its claim and intended not to further investigate in violation of 15 U.S.C. §1692(e)(5).

18. Midland's conduct violates the FDCPA for which strict liability applies pursuant to 15 U.S.C. §1692, et seq.

19. Midland's conduct violates the FDCPA for which statutory damages apply pursuant to 15 U.S.C. §1692k(a)(2)(A).

IV.
DAMAGES

20. As a direct and proximate result of the occurrence made the basis of this lawsuit, Robinson is entitled to the following damages:

- i. statutory damages in the maximum amount of \$1,000.00 pursuant to 15 U.S.C. §1692(k)(a)(2)(A);
- ii. actual damages pursuant to 15 U.S.C. §1692k(a)(1);
- iii. costs, expenses and attorney fees pursuant to 15 U.S.C. §1692(k)(a)(3);

21. Robinson requests a bench trial.

VI.
PRAAYER

WHEREFORE, Robinson prays that:

1. He be granted statutory damages in the maximum amount of \$1,000.00 pursuant to the 15 U.S.C. §1692(k)(a)(2)(A);
2. He be granted actual damages pursuant to 15 U.S.C. §1692k(a)(1) in an amount to be proven at trial;
3. He be granted his costs, expenses and attorney fees pursuant to 15 U.S.C. §1692(k)(a)(3).

Respectfully submitted,

By: 
Todd Wooten, Esq. ABN 94034
WOOTEN LAW FIRM
2226 Cottondale Lane, Suite 210
Little Rock, Arkansas 722202
Telephone: (501) 218-6064
todd@wootenlaw.net

and

J.R. Andrews, Esq. ABN 92041
Attorney at Law
2014 Martha Drive
Little Rock, Arkansas 72212
Telephone: (501) 680-3634
jrandrewsatty@yahoo.com

Attorneys for Plaintiff

FILED

IN THE DISTRICT COURT OF 2014 JUL 22 AM 10 02
PULASKI COUNTY, ARKANSAS

MIDLAND FUNDING LLC AS SUCCESSOR IN INTEREST TO GE MONEY BANK
VS. NO. 2014 14-63 PLAINTIFF
Reginald Robinson DEFENDANT

COMPLAINT

Plaintiff's Address: C/O Law Office of Stephen P. Lamb, P.O. Box 1027 Beebe, AR 72012

Defendant's Address: 9210 Lew Dr Little Rock AR 72209

Court Address: PULASKI COUNTY DISTRICT
2201 E. Kiehl Ave, PO BOX 6256 SHERWOOD AR 72124-6256

1. Nature of Claim: This case is a suit on an account.

2. Nature and Amount of Relief Claimed: That the Defendant is liable to Plaintiff in the amount of \$1072.88, plus pre-judgment interest at 5.5% per annum from the charge-off date 02/03/2010, the sum of which is shown on the attached affidavit of account at the time it was prepared, and which currently totals \$141.52; for all court costs incurred and an attorney's fee; and upon Judgment, the principal balance should accrue post-judgment interest at the maximum rate allowed by law, currently 10%.

3. Factual Basis of Claim: Defendant received a credit account from Plaintiff's predecessor in interest, as detailed by the documents attached hereto upon which the claim is based. The Defendant made various charges on the account, leaving an outstanding balance due. Plaintiff obtained by assignment all rights, title and interest to the account, which remains unpaid despite the demands of Plaintiff.

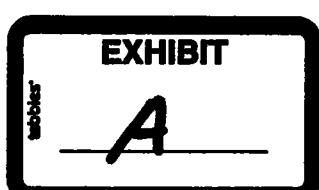
WHEREFORE, Plaintiff prays for Judgment against Defendant in the amount of \$1072.88, for pre-judgment interest as stated above, all court costs incurred, an attorney's fee, and post-judgment interest of 10%, and any and all other proper relief.

Plaintiff's Attorney

Law Office of Stephen P. Lamb
Stephen P. Lamb, ABA # 79-115
Mac Golden, ABA # 97-156
Attorneys at Law
P.O. Box 1027
Beebe, AR 72012
(501) 882-9900

By: STEPHEN P. LAMB OR
MAC GOLDEN

ORIGINAL SIGNER



MIDLAND FUNDING LLC, as successor in
interest to GE MONEY BANK

2014 JUL 22 AM 10 02

Plaintiff

-vs-

SHERWOOD DISTRICT COURT
AFFIDAVIT OF MOLLY KAMPA
SHERWOOD, ARKANSAS

Reginald Robinson,

Defendant(s).

Molly Kampa, whose business address is 16 Mcleland Road Suite 101, St. Cloud, MN 56303, certifies and says:

1. I am employed as a Legal Specialist and have access to pertinent account records for Midland Credit Management, Inc. ("MCM"), servicer of this account on behalf of MIDLAND FUNDING LLC, the plaintiff in this action. Plaintiff purchases portfolios of delinquent accounts from either the original creditor or a subsequent purchaser of the account, and thereafter assigns the accounts to MCM to be serviced. Plaintiff does not operate and / or maintain a computer system. MCM holds the computer records and account information for accounts purchased by plaintiff. I am a competent person over eighteen years of age, and make the statements herein based upon personal knowledge of those account records maintained on plaintiff's behalf. Plaintiff is the current owner of, and/or successor to, the obligation sued upon, and was assigned all the rights, title and interest to defendants GE MONEY BANK account (hereinafter "the account"). I have access to and have reviewed the records pertaining to the account and am authorized to make this affidavit on plaintiff's behalf.
2. I am familiar with and trained on the manner and method by which MCM creates and maintains its business records pertaining to this account. The records are kept in the regular course of business. It was in the regular course of business for a person with knowledge of the act or event recorded to make the record or data compilation, or for a person with knowledge to transmit information thereof to be included in such record. In the regular course

AFFIDAVIT OF MOLLY KAMPA - 1

AFFRECORD

of business, the record or compilation is made at or near the time of the act or event. The relevant financial information concerning the account includes the following:

3. MCM's records show that the defendant(s) owed a balance of \$1072.88; and that interest is due from 2010-02-03 accruing at a rate of 5.5000% as provided by law, amounting to \$136.34, making a total due and owing of \$1209.22 as of 2014-06-13.

I certify under penalty of perjury that the foregoing statements are true and correct.

JUL 01 2014

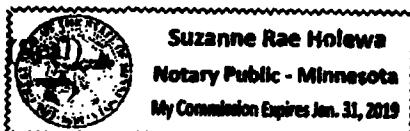
Date

Molly Kampa

STATE OF MINNESOTA

COUNTY OF STEARNS

Signed and sworn to (or affirmed) before me on JUL 01 2014 by Molly Kampa.



Suzanne Rae Holewa
Notary Public

My commission expires: _____

AR7
Law Office of Stephen P. Lamb

AFFIDAVIT OF MOLLY KAMPA - 2

AFFRECORD

Customer Service/Questions: For account information, please call the toll free number on the front of this statement. Unless your name is listed on this statement, your access to information on the account may be limited. You may also mail questions (but not payments) to: PO Box 981064, El Paso TX. 79998-1064. Please include your account number on any correspondence you send to us.

Payments: Send payments to the address listed on the remit portion of this statement or pay online.

Notice: See below for your Billing Rights and other important information. Telephoning about billing errors will not preserve your rights under federal law. To preserve your rights, please write to our Billing Inquiries Address, P.O. Box 981401, El Paso, TX. 79998-1401.

Purchases, return, and payments made just prior to billing date may not appear until next month's statement. We reserve the right to obtain payment electronically for any check or other instrument that you send to us by initiating an ACH (electronic) debit in the amount of your check or instrument to your account. Your check or instrument will not be returned to you by us or your bank. Your bank account may be debited as early as the same day we receive your payment. You may choose not to have your payment collected electronically by sending your payment (with the payment stub), in your own envelope – not the enclosed window envelope, addressed to: PO Box 980097 Orlando, FL. 32898-0097 and not the Payment Address.

Billing Rights Summary - In case of Errors or Questions About Your Bill: If you think your bill is wrong, or if you need more information about a transaction on your bill, write to us on a separate sheet at our Billing Inquiries Address, P.O. Box 981401, El Paso, TX 79998-1401 as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information: • Your name and account number • The dollar amount of the suspected error • Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about. You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

Special Rule for Credit Card Purchases: If you have a problem with the quality of goods or services that you purchased with a credit card and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than \$50 and the purchase was made in your home state or within 100 miles of your mailing address. These limitations do not apply if we own or operate the merchant or if we mailed you the advertisement for the goods or services.

Information About Payments: You may pay more than the **Total Minimum Payment** at any time. Payments received after 5:00 PM (ET) on any day will be credited on the next day. Credit to your Account may be delayed up to five days if payment (a) is not received at the Payment Address, (b) is not made in U.S. dollars drawn on a U.S. financial institution located in the U.S., (c) is not accompanied by the remittance coupon attached to your statement, (d) contains more than one payment or remittance coupon, (e) is not received in the remittance envelope provided or (f) includes staples, paper clips, tape, a folded check, or correspondence of any type. **Conditions/Payments:** All written communications concerning disputed amounts, including any check or other payment instrument that: (i) indicates that the payment constitutes "payment in full" or is tendered as full satisfaction of a disputed amount; or (ii) is tendered with other conditions or limitations ("Disputed Payments"), must be mailed or delivered to us at P.O. Box 981401, El Paso, TX. 79998-1401.

Payment Allocation: We reserve the right to select the method by which payments and credits are allocated to your Account in our sole discretion. The payment allocation method that we use may result in higher Finance Charges on your Account, depending on the type of transaction you make (such as promotional or non-promotional purchases), and the timing and amount of your payments. If you have questions about our allocation of your payment, or if your payments are not allocated to your promotional purchases in a manner you desire, please call customer service phone number to see whether we can reallocate your payments based on another payment allocation option we offer.

Credits to Your Account: An amount shown in parentheses is a credit or credit balance unless otherwise indicated. Credits will be applied to your previous balance immediately upon receipt, but will not satisfy any required payment that may be due.

Telephone Monitoring: To ensure that you receive accurate and courteous customer service, your telephone calls with us may be monitored by our employees or agents and you agree to this monitoring.

Credit Reports and Account Information: If you believe that we may have reported inaccurate information about you to a consumer-reporting agency, please contact us at P.O. Box 981400, El Paso, TX. 79998-1400. In doing so, please identify the inaccurate information and tell us why you believe it is incorrect. If you have a copy of the credit report that includes the inaccurate information, please include a copy of that report. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Information About Finance Charges: Returned Check Fees and Late Payment Fees are included in the balance subject to Finance Charge for Method 2D and are not included for all other methods. Credit insurance premiums and debt cancellation fees, if applicable, are not included in any of the following methods: In Methods 2M, 3M, 5 and 6, any Average Daily Balance of less than zero will be treated as zero. In Method 2D, any Daily Balance of less than zero will be treated as zero.

Method 2M: The balance subject to Finance Charge is the Average Daily Balance. To get this balance, we first determine the daily balances for the billing period by taking the opening balance each day, which includes any unpaid Finance Charges from the previous billing period, subtract any payments and credits, and add new Purchases unless the amount you owe at the beginning of the period is \$0 or is paid by the Payment Due Date. We then add all the daily balances and divide this total by the number of days in the period, which gives us your Average Daily Balance. However, if what you owe at the beginning of the period is paid by the Payment Due Date, your balance subject to Finance Charge is \$0.

Method 2D: We follow the same procedure described in Method 2M except that each day, we multiply the Daily Balance by the daily periodic rate to obtain a Finance Charge for that day, and add it to the Daily Balance. This gives us the day's closing balance, and will be the opening balance for the following day. At the end of the billing period, we add up the daily Finance Charges to get the total periodic Finance Charge for the billing period. You can determine this Finance Charge by applying the daily periodic rate to the balance subject to Finance Charge multiplied by the number of days in the billing period.

Method 3M: The balance subject to Finance Charge is your Average Daily Balance. To get this balance, we first determine the daily balances for the billing period by taking the opening balance each day, which includes any unpaid Finance Charges from the previous billing period, and subtract any payments and credits. We do not add in any new purchases. We then add all the daily balances and divide this total by the number of days in the period, which gives us your Average Daily Balance. However, if what you owe at the beginning of the period is paid during the period, your balance subject to finance charge is 0.

Method 5: The balance subject to Finance Charge is your Average Daily Balance. To get this balance, we first determine the daily balances for the billing period by taking the opening balance each day and subtract any payments and credits and any prior Finance Charges not paid during the period. We do not add in any new purchases. We then add all the daily balances and divide this total by the number of days in the period, which gives us your Average Daily Balance. However, if what you owe at the beginning of the period is paid during the period, your balance subject to finance charge is \$0.

Method 6: The balance subject to Finance Charge is your Average Daily Balance. To get this balance, we first determine the daily balances for the billing period by taking the opening balance each day, subtract any payments and credits and any prior finance charges not paid during the period, and add new Purchases unless the amount you owe at the beginning of the period is \$0 or is paid during the period. We then add all the daily balances and divide this total by the number of days in the period, which gives us your Average Daily Balance. However, if what you owe at the beginning of the period is paid during the period, your balance subject to finance charge is \$0.

Bankruptcy Notice: If you file bankruptcy you must send us notice, including account number and all information related to the proceeding to the following address: GE Money Bank, Attn: Bankruptcy Dept., P.O. Box 103104, Roswell, GA. 30076.

Your account is owned and serviced by GE Money Bank. For complete terms and conditions of your account, consult your Credit Card Agreement.

Hearing Impaired: TDD users call 1-800-444-1732

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Use of Information About You and Your Account: Our Privacy Policy describes our collection and disclosure of information about you and your Account. If you would like another copy of the Privacy Policy, please call us at the customer service telephone number indicated on the front of this statement.

This is an attempt to collect a debt and any information obtained will be used for that purpose.

By providing a telephone number on my account, I consent to GE Money Bank and any other owner or servicer of my account contacting me about my account, including using any contact information or cell phone numbers I provide, and I consent to the use of my automatic telephone dialing system and/or an artificial or prerecorded voice when contacting me, even if I am charged for the call under my phone plan.

For changes of address, phone number and/or email, please check the box and print the changes below.

<input type="checkbox"/>	Name _____
Street _____	
Address _____	
City, St. _____	
Zip _____	
Phone # _____	Home Phone # _____
E-mail _____	Business Phone # _____
	Cell # or other phone # we can use to contact you
	Email Address _____

BY PROVIDING YOUR EMAIL ADDRESS, YOU AGREE TO RECEIVE EMAIL COMMUNICATION ABOUT YOUR ACCOUNT AND ALSO GIVE PERMISSION FOR US TO PROVIDE YOUR EMAIL ADDRESS TO SAM'S CLUB.

ACCTNUM	[REDACTED]
MKR_FN	REGINALD
MKR_LN	ROBINSON
MKR_TAXID	****[REDACTED]
MKR_AD1	9210 LEW DR
MKR_CITY	LITTLE ROCK
MKR_ST	AR
MKR_ZIP	72209-6410
MKR_HP	[REDACTED]
OPENDATE	20030514
CHGOFF_DATE	20100203
RMSLASTPMT	20090624
LASTPMTAMT	42
LOSSAMT	1535.15
SALE AMT	1535.15
OFF_DESC	Sam's Club
BCLE_DESC	GE Money Bank